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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

WRIT PETITION NO. 4041/03.

PETITIONER

G.R. Nirala,
S/o. Shri Mani Nath Nirala, 48 yrs.
Sub - Engineer, O/o. Assistant
Engineer (Electrical Safety)
and Assistant Electrical Enspector
Raigarh, Sub-Divn. Raigarh (C.G.).

V E R S U S

RESPONDENTS

- : 1) State of Chhattisgarh,
through : The Secretary,
Energy Deptt. Mantralaya,
D.K.S. Bhavan, Raipur.
- 2) The Chief Electrical Inspector,
Govt. of C.G.,
Near Favvara Chowk,
Bairon Bazar, Raipur (C.G.).
- 3) The Chief Engineer (Electrical
Safety) and the Chief Electrical
Inspector Govt. of M.P.,
Satpura Bhavan, Bhopal,
- 4) Shri M.M. Kharvar,
Sub-Engineer, O/o. Chief Electrical
Inspector Near Favvara Chowk,
Bairon Bazar, Raipur (C.G.).

WRIT PETITION UNDER ARTICLE 226 & 227 OF THE CONSTITUTION
OF INDIA

1. Particulars of the Petitioner :

As per cause title.

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6.5.06

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4041 of 2003

Petitioner

G. R. Nirala

Versus

Respondents

State of Chhattisgarh & others

Post for order on 8th May, 2006.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4041 of 2003

Petitioner

G. R. Nirala

Versus

Respondents

State of Chhattisgarh & others

Shri Prafull Bharat, Advocate for the petitioner.

Shri Ajay Dwivedi, Panel lawyer for the Respondents No. 1 and 2.

None for the Respondents No. 3 and 4.

ORDER

(8th May 2006)

This order of the Court was passed by Justice Satish K. Agnihotri.

1. The present petition impugns the order dated 1.10.2003 (Annexure P/15) whereby the respondent No.4 Shri M. M. Kharver has been promoted to the post of Assistant Engineer. The grievance of the petitioner is that the respondent No.4, who is much junior to the petitioner has been granted benefit of the promotion, ignoring rightful claim of the petitioner by the respondents No. 1 to 3, without assigning proper place to the petitioner in the list of seniority.
2. The brief undisputed facts, necessary for consideration of the present petition are that the petitioner was working on the post of Surveyor on ad hoc basis w.e.f. 29.3.1985. Vide order dated 15.7.1991 (Annexure P/1) the petitioner was appointed on officiating basis along with other persons, wherein name of the petitioner was placed at serial No.1 and name of respondent No.4 was placed at serial No.3. The petitioner has filed gradation list (Annexure P/2), showing the position as on 1.4.1995, in which the name of the petitioner was placed at serial No.8 and the name of the respondent No.4 was placed at serial No.10.

The particulars of the petitioner and the respondent No.4, mentioned in the gradation list were as under:

Name	Qualification	Date of initial appointment	Date of appointment in cadre	Date of confirmation
Shri G. R. Nirala	Diploma	29.3.1985	5.8.1991	-
Shri M.M.Kharvar	Diploma	4.4.1985	22.7.1991	-

3. Since the petitioner could not pass the departmental examination within the stipulated period, in the gradation list for the year 1996 (Annexure P/3) the name of the petitioner was placed at serial No. 45 and in the gradation list for the year 1998 (Annexure P/4) at serial No. 49. In both these gradation lists the name of the respondent No.4 was placed at serial No. 6.
4. Shri Prafull Bharat, learned counsel appearing for the petitioner submits that the appointment of the petitioner along with respondent No.4 was with a condition that the officers have to pass the departmental examination on completion of probation period of three years in accordance with the provisions of the Mahdya Pradesh Electrical Inspectorate (Departmental Examination) Rules, 1987 (for short 'the Rules 1997'). It was further contended that the prescribed period of three years for passing the examination was extended by sub rule (3) of Rule 2 of the Rules 1987 by order (Annexure P/6). Hence, the petitioner be granted seniority from the date of initial appointment i.e. 15.7.1991 in accordance with rule 5 (1) (a) of the Rules 1987.
5. Smt. Anju Ahuja, learned counsel appearing for the respondents No. 1 and 2 submitted that the petitioner has failed to pass the necessary departmental examination within the prescribed period of three years. The petitioner was never granted any extension of time under sub-

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rule (3) of Rule 2 of the Rules, 1987 to pass departmental examination. Hence the date of confirmation of the petitioner on the post of Surveyor w.e.f. 1.4.1997 by order dated 2.9.1997 (Annexure R/2) was legal and valid. The order (Annexure P/6) is not the order granting extension of prescribed period but it provides for relaxation in case of the applicability of the provisions of Rule 5 (1) and (2) of the Rules, 1987.

6. Despite service of the notice on the respondents No. 3 and 4, none appeared nor any representation was made on their behalf.

7. After having heard learned counsel for the petitioner and for the respondents No. 1 and 2 and having perused the records appended to the petition and return filed by the respondents No. 1 and 2, it is evident that the order (Annexure P/6) did not provide for extension of the prescribed period of passing departmental examination under sub-rule (3) of the Rule 2 of the Rules, 1987. The said order grants relaxation for the applicability of the provisions of the Rule 5 (1) and (2) of the Rules, 1987, which provides that a government servant, if fails to pass the prescribed departmental examination within the prescribed period or the extended period, shall not be confirmed on his post and/or considered for promotion to a higher post. Sub rule (2) of the Rule 5 of the Rules 1987 provides for removal from service in case of appointment by direct recruitment or reversion to the previous post, in case of appointment by promotion. By order (Annexure P/6) the respondent No.3, in exercise of the powers under Rule 7 of the Rules 1987, has relaxed the applicability of the provisions of sub rule (1) and (2) of the Rule 5 of the Rules, 1987. The relaxation granted by the Respondent No.3 under Rule 7 is only to the extent that the petitioner would not be removed from

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service on failure to pass the prescribed departmental examination within the prescribed period or extended period.

8. Sub-rule (3) of the Rule 2, Rule 5 and Rule 7 of the Rules 1987 are quoted herein below:-

"2. Departmental Examinations:

(3) The State Government or the appointing authority, as the case may be, may in special cases, for reasons to be recorded in writing extend the period prescribed in sub-rule (1) or (2) by not more than two years and the concerned officer / employee shall pass the departmental examination within the extended period."

"5. Consequences of not passing the examination :

(1) A government servant who has not passed the prescribed departmental examination within the prescribed period or the period extended, shall not be entitled for :-

(a) Confirmation in his present post, or

(b) Promotion to a higher post,

(2) A government servant who has been appointed after coming into force of these rules and who fails to pass the departmental examination within the prescribed period including any extension thereof shall be liable to be :-

(i) removed from service if he was appointed by direct recruitment, or

(ii) reverted to his previous post if he was appointed by promotion,

(3) The Government servants who have not passed the examination within the prescribed period and for whom the period has been extended under sub-rule (3) of rule 2, shall not be entitled for increments during the extended period until they pass the examination.

Provided that on passing the departmental examinations the pay of the Government servant shall be fixed at such stage which he would have reached if the increments were not stopped with effect from the date, next to the completion of the examination."

"7. The State Government may relax any of the provisions of these rules for proper and adequate reasons."

9. Keeping in view the fact, that the petitioner could not pass the prescribed departmental examination within the prescribed period i.e. three years and extended period, if any, of two years and as such the grant of confirmation w.e.f. 1.4.1997 seems to be correct. Accordingly the placement of the petitioner in the subsequent seniority list on the basis of date of confirmation, below the respondent No.4 is perfectly valid and subsequent promotion to the post of Assistant Engineer (Electrical Safety) by impugned order dated 1.10.2003 (Annexure P/15) is also legal and valid. The particulars of the petitioner and the respondent No.4, mentioned in the subsequent gradation list, which are as below, support the above conclusion :-

Name	Qualification	Date of initial appointment	Date of appointment in cadre	Date of confirmation
Shri G. R. Nirala	Diploma	20.3.1985	5.8.1991	1.4.1997
Shri M.M.Kharvar	Diploma	4.4.1985	22.7.1991	1.1.1995

10. The Supreme Court in the case of **Om Prakash Shrivastava Vs. State of M.P. & another** { (2005) 11 SCC 488}, while considering the Rule 12 (a) of the M.P. Civil Services (General Conditions of Services) Rules, 1961 with regard to the assigning the seniority, in paragraphs 10 and 11 observed as under:-

"10. xxxxx As was noted in M.P. Chandoria case until the probation period is completed, and he is confirmed in the post, the employee does not become a member of the service on successful completion of the probation and passing of the prescribed tests or conditions precedent to declaration of completion of the probation period. Mere completion of one year period does not entitle the person to be a member of the service. He continues to be in temporary service on the completion of probation period. The appointing authority is to confirm him in a pending post available or grant him a quasi-permanent status. Unless he passes departmental examination, there

is no question of completion of probation and for all practical purposes the employee continues to be in temporary service xxxxx.

11. Reiterating the principles in M.P. Chandoria case it was held in Ramkinkar Gupta case that if a person does not pass the test then the appointing authority is empowered to assign seniority in a lower level than one which has been assigned by the Public Service Commission. A person who has neither been confirmed, nor had a certificate in his favour in terms of sub-rule (6), nor discharged from service under sub-rule (4) would fall within the category of those officers referred to in sub-rule (7) of Rule 8 of the Rules. In other words, he is to be deemed to be a temporary government servant with effect from the date of expiry of probation. The position is different in case of an officer, who passes the departmental examination within an extended period of probation."

11. The Supreme Court in the case of **Mohand Lal and others Vs. State of H.P. through its Secretary, Excise & Taxation Department, Government Secretariat, Shimla-2 & others** { (1997) 4 SCC 416 } in para 4 observed as under:-

"4. xxxxx This Court in Ishwari Kumar V. State of H.P. had held that such of the candidates who passed the examinations within two years and were confirmed after passing the departmental tests, would get seniority from the respective dates of their joining the post and the date of passing the departmental test relates back to the date of the appointment. But those who passed the examination after the said two years would get seniority from the date of passing and would rank junior to those who passed the examination within two years xxxxxx."

12. The case of **Jagdish Kumar & others Vs. State of H.P. & others** (2005 AIR SCW 6431) relied on by learned counsel for the petitioner is not applicable to the facts of the present case, as in the present case there was clear opportunity to pass the departmental examination within the prescribed period, and the petitioner has failed to pass the prescribed departmental examination within the prescribed period of three years and thereafter even if it is presumed that the petitioner

was granted two years extended period, the petitioner could not pass the departmental examination within the extended period also. The ratio laid down by the Supreme Court in the case of **Jagdish Kumar & others** (supra) is not applicable to the facts of the present case.

13. For the reasons stated above, it is held that the fixation of name of the petitioner in the seniority list is correct and proper. The promotion to the post of Assistant Engineer (Electrical Safety), on the basis of the seniority of the respondent No.4 is also proper and valid. Accordingly, this petition fails and is dismissed. In the facts of the case, no order as to costs.

Sd/-
Satish K. Agnihotri
Judge